

Chapter Four of the Guidelines and whose instant offense did not involve specified aggravating factors. The Sentencing Commission has given retroactive effect to Amendment 821. *See* N.D. Ind. Gen. Order 2023-32, available at <https://www.innd.uscourts.gov/sites/innd/files/2023-32.pdf>.

In this case, defendant does not qualify for a reduction in sentence under Part A of Amendment 821. At sentencing, defendant's criminal history category was calculated at III based upon a total of six (6) criminal history points. (PSR ¶¶ 38, 39.) Part A functions to lower defendant's criminal history points from six (6) to four (4), but even so, defendant's criminal history category remains III. (*See* DE # 179.)

The court may only "reduce" a defendant's sentence—that is, the court can act only where "the guideline range applicable to that defendant has subsequently been lowered." USSG § 1B1.10(a)(1); 18 U.S.C. § 3582(c)(2). A reduction is not authorized under § 3582(c)(2) if the guideline amendment did not have the effect of lowering the defendant's applicable guideline range. USSG § 1B1.10(a)(2). Because Part A of Amendment 821 does not have any effect on defendant's criminal history category, it also does not have any effect on defendant's guideline range. Thus, defendant is not entitled to relief under 18 U.S.C. § 3582(c)(2) and Amendment 821 Part A.

Nor can Part B of Amendment 821 be of any assistance. Part B provides for a decrease of two offense levels for certain offenders who did not receive any criminal history points. Defendant *did* receive criminal history points, so Part B is inapplicable.

In summary, defendant does not benefit from either Part A or B of Amendment 821 to the Sentencing Guidelines. Accordingly, his filing, interpreted as a motion under 18 U.S.C. § 3582(c)(2) and Amendment 821, must be **DENIED**. (DE # 172.)

SO ORDERED.

Date: June 4, 2024

s/James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT